

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 17, 2002

IN RE:

**GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE**

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) **DOCKET NO. 00-00523**
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**ORDER ACCEPTING PETITION FOR APPEAL
AND APPOINTING HEARING OFFICER**

This matter came before Chairman Sara Kyle, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on July 23, 2002 for consideration of *BellSouth Telecommunications, Inc.'s Motion for Reconsideration or, In the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2002* (the "Motion"), filed by BellSouth Telecommunications, Inc. ("BellSouth") on July 15, 2002.

In a *Report and Recommendation of Pre-Hearing Officer*, issued on November 8, 2000, then Director Melvin J. Malone,¹ serving as Hearing Officer, set forth three (3) legal issues:

¹ The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Deborah Taylor Tate, Pat Miller, and Ron Jones began terms as Directors on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Miller and Jones was randomly selected and assigned to Docket No. 00-00523.

1. Does the TRA have jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers?
2. Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?
3. Is the State's Universal Service statute, as enacted, intended to apply to rate of return regulated companies, as such companies are defined under state law?²

In a previous Initial Order, issued on December 29, 2000, the Hearing Officer concluded that the Authority has jurisdiction over the toll settlement arrangements between BellSouth and the Rural Local Exchange Carriers.³

On June 28, 2002, the Hearing Officer issued an *Initial Order for the Purpose of Addressing Legal Issues 2 & 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000*, which addressed the two (2) remaining legal issues in this docket. On the remaining two (2) issues, the Hearing Officer concluded in the June 28, 2002 *Initial Order* that "the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers should be considered in the Rural Universal Service proceeding."⁴ The Hearing Officer also concluded that "the State's Universal Service statute, as enacted, is intended to apply to rate of return regulated companies, as such companies are defined under state law."⁵

In its *Motion*, BellSouth "requests that the Authority reconsider the Initial Order and/or clarify that the negotiation in which the parties were directed to participate should not be

² *Report and Recommendation of Pre-Hearing Officer* (November 8, 2000), Attachment 2.

³ *Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction over IntraLATA Toll Settlement Agreements Between BellSouth Telecommunications, Inc. and Independent Incumbent Local Exchange Carriers* (December 29, 2000), p. 10.

⁴ *Initial Order for the Purpose of Addressing Legal Issues 2 & 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000* (June 28, 2002), p. 8.

⁵ *Id.*

hampered or delayed in any fashion by the Initial Order.”⁶ Although it is styled a “Motion for Reconsideration,” the Authority determines that BellSouth’s request that the Authority consider its *Motion* renders the *Motion* a petition for appeal from the Initial Order under Tenn. Code Ann. § 4-5-315(b).

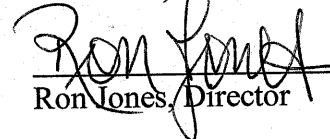
At the July 23, 2002 Authority Conference, the Authority accepted BellSouth’s *Motion* as a petition for appeal, to be considered on the merits at a later date. The Authority also appointed Director Ron Jones as Hearing Officer in this matter for the purpose of preparing this matter for consideration by the Directors and directed BellSouth to file a brief addressing the issues raised in its *Motion*.

IT IS THEREFORE ORDERED THAT:

1. BellSouth’s *Motion* is accepted as a petition for appeal of the Hearing Officer’s June 28, 2002 *Initial Order*.
2. Director Ron Jones is appointed Hearing Officer in this matter for the purpose of preparing this matter for consideration by the Directors.
3. BellSouth shall file a brief addressing the issues raised in its *Motion*.


Sara Kyle, Chairman


Pat Miller, Director


Ron Jones, Director

⁶ BellSouth Telecommunications, Inc.’s Motion for Reconsideration or, In the Alternative, Clarification of Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000, July 15, 2002, p. 4.